

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 08-134

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JOEL SCHNEIDER  
U.S. Magistrate Judge

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In Regard to the Matter of:

Bayside State Prison  
Litigation

OPINION/REPORT  
OF THE  
SPECIAL MASTER

EDDIE CARTER

-vs-

WILLIAM H. FAUVER, et al,

Defendants.  
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\* \* \* \*

TUESDAY, APRIL 14, 2009

\* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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4 Transcript of proceedings in the above  
5 matter taken by Theresa O. Mastroianni, Certified  
6 Court Reporter, license number 30X100085700, and  
7 Notary Public of the State of New Jersey at the  
8 United States District Court House, One Gerry Plaza,  
9 Camden, New Jersey, 08102, commencing at 2:34 PM.  
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1 JUDGE BISSELL: I'm now reopening  
2 proceedings in the case of Eddie Carter, docket  
3 number 08-134.

4 This opinion/report is being issued  
5 pursuant to the directives of the Order of Reference  
6 to a Special Master and the Special Master's  
7 Agreement and the guiding principles of law which  
8 underlie this decision to be applied to the facts  
9 upon which it is based as set forth in the jury  
10 instructions in the Walker and Mejias jury charges to  
11 the extent applicable to the allegations of  
12 Mr. Carter.

13 As finalized after review under Local  
14 Civil Rule 52.1, this transcript will constitute the  
15 written report required under paragraph seven of the  
16 Order of Reference to a Special Master.

17 Eddie Carter arrived at BSP and was  
18 assigned to D Tent during the lockdown. He testified  
19 to certain events that allegedly occurred to him. He  
20 talked about a beating in D Tent beginning at page  
21 eight, line 16. He's asked:

22 "Question: Can you tell us how long  
23 after you arrived in D Tent did the beating occur?

24 "Answer: I think it was like about the  
25 second or third day I was there and, you know, like

1 from the first day, every night they would have a  
2 certain group of officers coming through the tents,  
3 very angrily coming through the tents, and I seen  
4 them pull people before I ever got pulled, but like  
5 about the second day I was selected to go -- I didn't  
6 know where I was going, but I was selected to go with  
7 a group of people, and they took us to another rec  
8 area. That's where I was assaulted at."

9 After a bit of colloquy that's not  
10 particularly relevant here, resuming at page nine on  
11 line 15:

12 "Question: Tell me what they said to  
13 you, or what one of them or all of them said to you  
14 when they came to your bunk.

15 "Answer: Well, when you come in the  
16 tents, they just came in and just started to select  
17 people to get up and step outside so, you know, I was  
18 just selected just to get up and step outside. So  
19 when I went outside, there was already like about ten  
20 people already out there, so I just had to get into  
21 that line.

22 "Question: Now, is this the rec area  
23 that you mentioned a few minutes ago?

24 "Answer: This is in front of the tent  
25 and when we left from in front of the tent, they

1 marched us down to the rec area.

2 "Question: The rec area, is that also  
3 outside?

4 "Answer: Yes, it is.

5 "Question: Is that --

6 "Answer: It's about 25 yards from the  
7 tent.

8 "Question: That's a recreation area;  
9 is that correct?

10 "Answer: Yes, it's the big building,  
11 about three times the size of this (courtroom), where  
12 they, you know, did meals at."

13 He was questioned further about this  
14 incident.

15 "Question: When you were brought in  
16 there, what area of the rec area were you brought to?

17 "Answer: Well, when you walk in the  
18 door it's just a big open space and you had a lot of  
19 chairs in there because they also have TV rec time in  
20 there and everything. So we were just brought in  
21 there and ordered to lay face down on the floor."

22 He talks about lying face down on the  
23 floor and getting kicked in the butt, as he described  
24 it, getting beaten back down when he tried to get up  
25 off the floor instinctively, that he was also kicked

1 in the bridge of his nose and broke his nose. And  
2 bloodied it as well.

3 However, in his cross-examination,  
4 particularly when confronted with his deposition  
5 which had been taken in October of 2002, he has a  
6 very different story to recount.

7 Talking about this assault, begins at  
8 page 30 of that deposition:

9 "Question: What happened?

10 "Answer: On the second day I was  
11 there, they called, they called D Tent out and they  
12 called us to -- I guess it was a rec hall that  
13 they -- it wasn't nothing there. Just a tent.  
14 Another big, big, big tent.

15 "Right.

16 "You know, and they called us in there  
17 about 12 o'clock in the morning, something like that.  
18 12 in the morning.

19 "About 12 in the morning. 12 midnight?

20 "Answer: 12 midnight, yeah. And they  
21 called us in there, you know, they knew who we were,  
22 you know, the officers. They called us over, they  
23 knew who we were."

24 After some intervening testimony that's  
25 not particularly pertinent to this point his

1 testimony resumes at this description at page 37 of  
2 the deposition transcript.

3 "Question: All right. So what  
4 happened on this evening after your call. You say  
5 you recall that it was your whole tent called?

6 "Answer: The whole tent was called  
7 over.

8 "Question: What happened?

9 "Answer: They called us over and, you  
10 know, had us walk over to the rec tent. I think they  
11 called it, rec tent. And when we got in there, they  
12 told us to sit. They had the chairs lined up, told  
13 us to sit in the chairs and face the wall and put our  
14 head in our laps.

15 "Question: Put your head in your lap?

16 "Answer: Yes.

17 "Question: Okay.

18 "Answer: You know, that's not the way  
19 they said it, but you know, that's what it was they  
20 was telling us to do. And we did that, you know,  
21 and, you know, I couldn't put my head in my lap, you  
22 know. So when I couldn't do that, you know, the  
23 officer thought I was rebelling against him, what he  
24 was trying to get me to do. Right. So at that  
25 point, you know, he got on the back of my neck and



1 just jammed me down as far as he could. But every  
2 time he let me go, my head would come back up."

3 He then recounts at this point being  
4 slammed down to the floor of the tent from his chair  
5 as a result of this disobedience. He was lying on  
6 the floor at which point he was then kicked. His  
7 recollection is that they were SOG officers that did  
8 that, although that's not entirely clear.

9 Here again, we have a situation with a  
10 significant discrepancy in the description of the  
11 events. At trial before me he testified that it was  
12 a small select group of ten persons or so taken out  
13 of the tent, taken into the rec building, placed on  
14 the floor immediately and then assaulted.

15 In his testimony on deposition years  
16 earlier he testifies that the whole tent was cleared  
17 out, taken into the rec building and told to sit in  
18 the chairs in a certain fashion. And then upon his  
19 either refusal or inability to do so, he is taken  
20 down to the floor or pushed down to the floor and  
21 then assaulted.

22 Once again, I don't consider that  
23 discrepancy to be trivial. One might say, well,  
24 what's the difference, you know, he got beat up.  
25 Well, maybe he did or maybe he didn't, but the

1 situation is this: If you're fabricating a story,  
2 differences like this occur because maybe you don't  
3 always remember what you said the first time. The  
4 truth, frankly, doesn't have to rely on that. And I  
5 just find that there was no indicia of truth as to  
6 the happening of this event at all in light of the  
7 fact that we have two materially different versions  
8 of the event.

9 Perhaps stated another way, I think  
10 it's an appropriate inference that if called again to  
11 testify maybe in another six or 8 months or so about  
12 this event, we would probably get a third version.

13 Mr. Carter has failed to establish that  
14 this event in the recreation building in the area of  
15 the tents did, in fact, occur.

16 Finally, although not every item of  
17 evidence has been discussed in this opinion/report,  
18 all evidence presented to the Special Master was  
19 reviewed and considered. For the reasons set forth  
20 above I recommend in this report that the district  
21 court enter an order and judgment of no cause for  
22 action with regard to Eddie Carter.

23 Gentlemen, I'll see you tomorrow at  
24 9:30.

25 (Hearing Adjourned)

## C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Theresa O. Mastroianni  
Theresa O. Mastroianni, C.S.R.  
Notary Public, State of New Jersey  
My Commission Expires May 5, 2010  
Certificate No. XI0857  
Date: April 16, 2009